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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of:

Further Forbearance from Title II  
Regulation for Certain Types of  
Commercial Mobile Radio Service  
Providers

GN Docket No. 94-33

COMMENTS OF  
MCCAW CELLULAR COMMUNICATIONS, INC.

McCaw Cellular Communications, Inc. ("McCaw") respectfully submits its comments regarding the Notice in the above-captioned proceeding.<sup>1</sup> As discussed herein, asymmetrical regulation of Commercial Mobile Radio Service ("CMRS") providers within particular services is not warranted with respect to the Title II provisions under consideration in this proceeding. However, further forbearance from Section 226 of the Communications Act is clearly justified for all CMRS providers.<sup>2</sup>

I. ASYMMETRICAL REGULATION OF PROVIDERS WITHIN PARTICULAR COMMERCIAL MOBILE RADIO SERVICES IS UNWARRANTED.

In the Second Report and Order in Docket No. 93-252,<sup>3</sup> the Commission forbore from applying tariffing and certification requirements to all CMRS providers. The instant Notice asks whether forbearance from additional provisions of Title II is

<sup>1</sup> FCC 94-101, released May 4, 1994.

<sup>2</sup> Section 226 contains the requirements of the Telephone Operator Consumer Services Improvement Act ("TOCSIA").

<sup>3</sup> Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Red 1411, 1478-81 (1994).

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appropriate for certain classes of CMRS providers. Specifically, the Commission inquires whether the costs of complying with particular statutory sections outweigh the benefits of applying those provisions to "small" CMRS providers.<sup>4</sup>

Focusing on the specific statutory provisions in question, and in light of the Act's regulatory parity directive, asymmetrical regulation within CMRS services does not appear warranted:

One category of provisions contains Sections 210 (Franks and Passes), 213 (Valuation of Property), 215 (Examination of Transactions), 218 (Inquiry into Management), 219 (Annual Reports), and 220 (Form of Records and Accounts). As the Commission recognizes, "none of these provisions imposes affirmative obligations on CMRS providers."<sup>5</sup> Accordingly, there is no reason to differentiate classes of CMRS providers. In the absence of unique circumstances, forbearance should uniformly be extended to or denied to all carriers.

A second category contains Sections 223 (Obscene Communications), 227 (Telemarketing), and 228 (Pay-Per-Call). These provisions impose considerable costs on providers of non-common carrier services in an effort to address consumer protection concerns. Because entities incur these costs only by voluntarily entering the identified lines of business (or billing and collecting for companies providing those services) -- and these provisions seek to advance important consumer protection

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<sup>4</sup> Notice at ¶ 5. The Notice also asks how to define "small" CMRS providers for purposes of applying further forbearance. *Id.* at ¶ 6.

<sup>5</sup> Notice at ¶ 11.

objectives -- McCaw concurs with the Commission that selective forbearance is unnecessary.<sup>6</sup>

The Commission also asks whether to forbear from applying Section 225 to some CMRS providers. This section requires common carriers offering voice telephone transmission to provide telecommunications relay services and to contribute to the TRS fund.<sup>7</sup> Several considerations counsel against asymmetrical forbearance. First, this provision is intended to promote the accessibility of voice telecommunications services for individuals with hearing and speech disabilities. Second, the funding obligation is based on the revenues of the service provider. The smallest carriers need pay only \$100 per year, while larger carriers have funding obligations several orders of magnitude higher. Accordingly, the funding mechanism already accounts for the size of the carrier. Third, because the consumer benefits of TRS bear no relationship to the size of the CMRS carriers, disparate forbearance would frustrate the important policy behind TRS with no countervailing benefits.

Because the provisions discussed above produce no unique burdens for particular carriers, dissimilar regulation would distort competition. Creating categories of more regulated and less regulated carriers also would prove arbitrary and unenforceable. The Commission's proposed criteria for distinguishing "small" carriers -- e.g., revenues, average charges, sophistication of subscribers -- are essentially unrelated to profitability, and consequently are ill-suited for determining eligibility for

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<sup>6</sup> See *id.* at ¶¶ 13, 25, 30.

<sup>7</sup> *Id.* at ¶ 17.

relief from regulatory burdens. In addition, policing compliance would be burdensome, entities would cross and re-cross the dividing line as their businesses wax and wane, and companies would structure their operations in response to regulatory cues rather than marketplace realities. For these reasons, asymmetrical regulation would be imprudent and counter-productive.

\* \* \*

Finally, the Commission inquires whether forbearance from applying Section 226 (TOCSIA) is justified. As discussed below, further forbearance from this provision for all CMRS carriers plainly is warranted under the test set forth in Section 332.

## II. FURTHER FORBEARANCE FROM SECTION 226 IS APPROPRIATE FOR ALL CMRS PROVIDERS.

The records in Docket Nos. 93-252 and MSD 93-14 amply demonstrate that forbearance from applying TOCSIA requirements is warranted for all CMRS providers. First of all, such requirements are unnecessary to protect consumers or assure just and reasonable rates. As several parties have noted, there is no evidence of consumer complaints regarding mobile public phone services, and the incentive of mobile public phone providers is to maximize usage by keeping rates reasonable.<sup>8</sup>

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<sup>8</sup> See, e.g., Petition for Reconsideration of PCIA, *supra* note 12, at 5; Comments of McCaw, GN Docket No. 93-252, filed Nov. 8, 1993, at 11 n.31; Petition for Reconsideration of GTE, GN Docket No. 93-252, filed May 19, 1994, at 2-6; Petition for Reconsideration of GTE, MSD 92-14, filed Sept. 27, 1993, at 19-21.

(continued...)

Moreover, complying with TOCSIA requirements is impossible in some instances, and would impose massive costs in other cases. GTE has estimated that modifying cellular networks to satisfy TOCSIA's branding requirement would cost upwards of \$20 million for the cellular industry.<sup>9</sup> These costs undoubtedly spiral into the hundreds of millions when the expenses for ESMRs, PCS providers, and other CMRS carriers are taken into account. In addition, the record shows that underlying CMRS providers -- which are considered operator service providers ("OSPs") by the Bureau's Order in MSD 93-14 even when they offer no mobile public phone services and have no relationship with providers of such services -- cannot discharge many of the requirements of TOCSIA. Similarly, mobile public phone providers, if treated as "aggregators," cannot feasibly transfer calls to other mobile service providers, as TOCSIA would dictate.<sup>10</sup>

Imposition of TOCSIA requirements on CMRS providers also would undermine the benefits of forbearing from tariff regulation. As the Commission properly has found, CMRS tariffing would impede responsiveness, hinder price competition, and disserve consumers.<sup>11</sup> TOCSIA, however, mandates that all OSPs file informational

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<sup>9</sup>(...continued)

Indeed, far from protecting consumers, application of TOCSIA requirements to CMRS providers would engender substantial customer confusion. As GTE has explained, CMRS users who are roaming would be bombarded with a continuing series of branding requirements from different CMRS providers as they travel from area to area. GTE Petition for Reconsideration, GN Docket No. 93-252, at 4 n.9.

<sup>9</sup> GTE Petition for Reconsideration, MSD 92-14, supra note 13, at 17.

<sup>10</sup> See PCIA Petition for Reconsideration, supra note 12, at 5-6; GTE Petition for Reconsideration, GN Docket No. 93-252, supra note 13, at 4-5.

<sup>11</sup> Second Report and Order, 9 FCC Rcd at 1478-1479.

tariffs. Under a strict construction of TOCSIA, therefore, each of the thousands of CMRS providers would have to file tariffs because any one of them could unknowingly and involuntarily be converted into an OSP if a user of a mobile public phone service roams onto their system. At a minimum, the Commission should clarify that an entity should not have to file tariffs if it does not actively hold itself out as an OSP.


Plainly, applying TOCSIA to CMRS providers produces no benefits but tremendous costs. Forbearance accordingly is justified for CMRS providers of all sizes.

### III. CONCLUSION

Disparate forbearance within particular CMRS services is unwarranted, and would produce competitive distortions and be difficult to enforce. However, uniform forbearance from Section 226 is justified for all CMRS providers.

Respectfully submitted,  
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